

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSE C. IBARRA,

Petitioner,

v.

CIV 10-0392 WJ/KBM

RAY TERRY,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

The Magistrate Judge filed her proposed findings on May 17, 2010, recommending that the United States' motion to dismiss be granted. *See Doc. 8.* Neither the motion nor the proposed findings indicate whether the dismissal should be with or without prejudice. Based on the reasons for the dismissal, however, I find it should be without prejudice. *See Doc. 7 at 3 (Zadvydas claim premature; Demore claim unexhausted).*

The proposed findings notify Petitioner of his ability to file objections and that failure to do so waives appellate review. To-date, Petitioner has not filed any objections and there is nothing in the record indicating that the proposed findings were not delivered.

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 8*) is ADOPTED;
2. Respondents' Motion to Dismiss (*Doc. 7*) is GRANTED insofar as it seeks dismissal without prejudice;
3. The petition is dismissed **without prejudice**; and
4. A final order enter concurrently herewith.

A handwritten signature in black ink, appearing to be 'A. M. ...', is written over a horizontal line.

UNITED STATES DISTRICT JUDGE